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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,582	01/23/2002	Dennis P. Silver	11899	7015

22922 7590 04/16/2004

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EXAMINER

KOVACS, ARPAD F

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,582

Applicant(s)

SILVER, DENNIS P.

Examiner

Árpád Fábián Kovács

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-2, 4-6, 8, 10-11, 13, 15-18, 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8,10,11,13,15-18 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

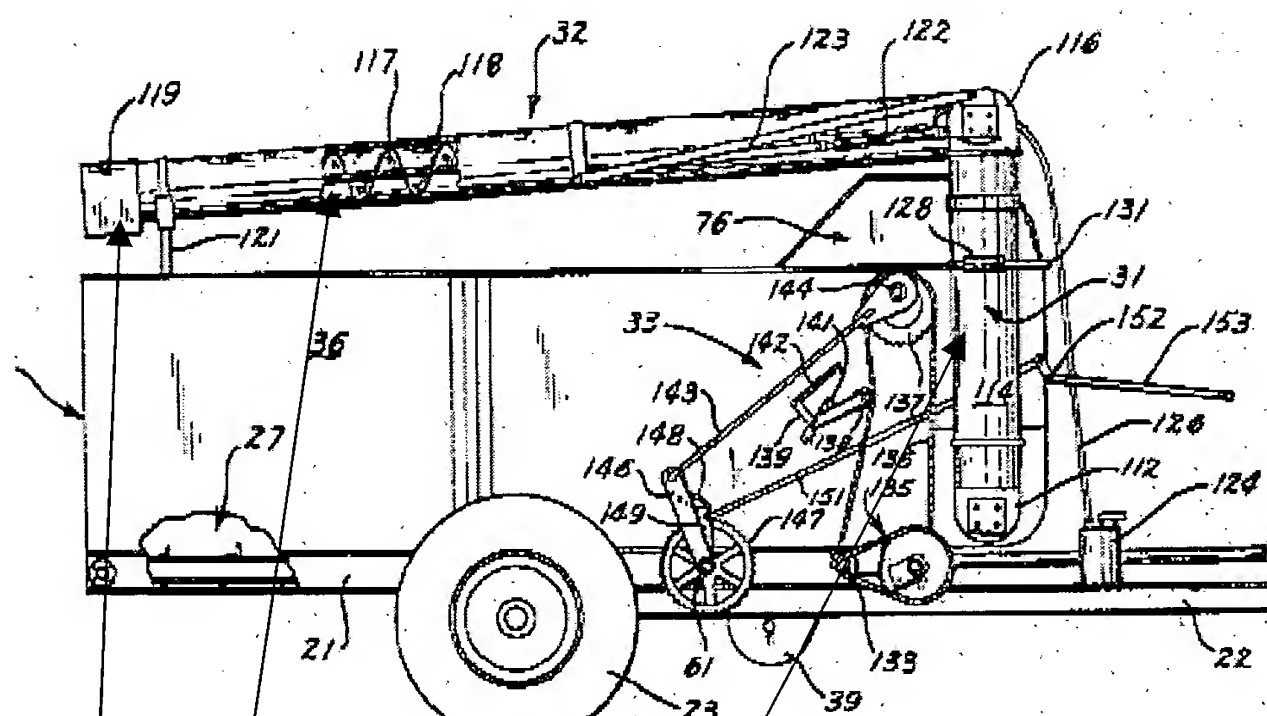
DETAILED ACTION***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4-6, 8, 10-11, 13, 15-18, new claim 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen (3286862), in view of Mooney et al (6119847).

Hansen discloses the claimed invention as also shown for clarity in the marked drawings below, except for the foldable unloading auger as claimed.



Outfeed auger
section

Substantially vertical
infeed auger section

Spout for preventing
spilling

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Mooney discloses, in col. 1, lines 48-59) that it is known in the art to provide a (any number of them) foldable outfeed auger actuated by a hydraulic cylinder.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the outfeed auger of Hansen with foldable feature taught by Mooney, since it is desirable to provide an auger type conveyor with foldable feature to fold them into a relatively compact unit (Mooney, col. 1, lines 48-59).

Response to Arguments

3. Applicant's arguments with respect to claims 1-2, 4-6, 8, 10-11, 13, 15-18, and new claim 21 have been considered but are moot in view of the new ground(s) of rejection.

In response to Applicant's argument on page 9:

It has been noted that Applicant broadened independent claim 1, by removing lines 11 & 12, in response to the objection that the "actuator" was not originally disclosed in the Application.

Also, it is noted that claim 21 is a new claim, however features recited therein were rejected by the same combination of prior art used to reject claims 1-2, 4-6, 8, 10-11, 13, 15-18.

Regarding the interview on Jan 7, 2004, the Examiner as outlined in the Interview Summary, pointed out that the actuator is considered a new matter, it is not only "beneficial" as applicant suggested, but also further required, as outlined in the 35 U.S.C. 132:

"The amendment ... objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure: in this case the "actuator" ... Applicant is required to cancel the new matter..."

Regarding the "substantially horizontal" argument, the Examiner did not agree with Applicant's assertion that Hansen's outfeed section is not "substantially horizontal"; because, as shown and explained in the Interview Summary, Hansen's outfeed section shown on fig 11, it is not only "substantially horizontal," but also horizontal when not secured down at ref 121.

Regarding the "safety mechanism" argument, the Examiner would like to refer back to the Examiner's Interview Summary, which is exact summary of the discussion pertaining to the safety mechanism.

In response to Applicant's argument on pages 10 & 11, 13, 14:

Regarding the drawings, per Applicant's request the earlier proposal to amend the specification/drawings/disclosure to include the new matter of the "actuator" will be considered moot.

Applicant's argument regarding Hansen, showing a slanted and not horizontal auger, is not agreed with, because there is a difference, as was already discussed during the interview, between a "substantially horizontal" and "horizontal"; and as further noted in the Interview Summary even a horizontal auger could be met by the prior art, although that is clearly not required as claimed.

In response to Applicant's argument on page 12:

Regarding Applicant's argument that a storage position does not necessitate "a stop" operation for the auger, is not germane in view of what is claimed and in view of what is disclosed in the Application. As the Applicant pointed out during the interview, the "safety mechanism" (claimed in claim 17, and new claim 21) "would be generic, and could be interpreted in the broadest possible meaning and which would be known to one skilled in the art" (see Interview Summary), while in the disclosure, as the Examiner pointed out during the interview, ref 31 does not appear to be shown and neither understood how such mechanism would provide for "preventing the crop material from spilling out when said auger is in storage position"; thus, the Examiner pointed out during the interview, and now, that when combination prior art auger placed in storage position the outfeed section or auger would stop functioning, there is no physical connection between the infeed section and the outfeed section auger flyers. Moreover, as also discussed during the interview, in view of a generic and well known safety mechanism claimed by the Applicant, the end spout & spillage stoppage would also prevent spillage in the combination prior art in the known manner admitted.

In response to Applicant's argument on page 13:

Regarding Applicant's argument that no portion of the first segment and second segment extends beyond the rearmost end of combine when the auger is in the storage position is not provided by the combination reference is not agreed with, it is unclear how the Applicant came to the conclusion that when the auger of the combination reference is placed into storage position should extend beyond the rearmost end of the combine. Examiner's contention is that when the auger parts folded into storage position they would be within the rearmost end in order to avoid being wider than the transport width allowed for vehicles on commercial road.

Regarding Applicant's argument in re claim 11, that "hinged joint is lockable" is not met by the combination prior art, is not agreed with, since the combination prior art (Mooney, fig 5) clearly shows that hinged joint is lockable.

In response to Applicant's argument on page 15:

In response to Applicant's argument in re "Lack of Motivation to Combine References," the Examiner does not agree, as pointed out in the rejection:

"It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the outfeed auger of Hansen with foldable feature taught by Mooney, since it is desirable to

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provide an auger type conveyor with foldable feature to fold them into a relatively compact unit where a hydraulic cylinder provides motive force to effect the folding operation (Mooney, col. 1, lines 48-59). "

In response to Applicant's argument on page 16:

In response to applicant's arguments against the references individually, how they may not interoperate, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant's attention is directed to the teaching of Mooney of a concept of having at least two augers pivotally attached, and not necessarily replacing Hansen's auger with Mooney's auger system, therefore, Applicant's suggestion to do is not germane.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Árpád Fábián Kovács
Primary Examiner
Art Unit 3671

ÁFK